

REMARKS

Claims 1-21 are all the claims pending in the application. Claims 1-15 and 22 are withdrawn. Claims 16-21 are rejected. Claims 16-21 have been amended for purposes of clarification. Support for the amendment can be found at least at pages 5, 19 and the original claims of the disclosure.

No new matter has been introduced and entry of the Amendment is respectfully requested.

A PTO/SB/08A and 08B form providing a separate list of references in compliance with 37 C.F.R. § 1.98 is being concurrently filed.

The Examiner's request for a substitute specification pursuant to 37 C.F.R. § 1.125 has been noted and Applicants intend to file a substitute specification in due course.

Claim Rejections - 35 USC § 112, first paragraph

Claims 16-21 are rejected under 35 U.S.C. 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The Action indicates that it is not clear whether the written description is sufficiently repeatable to avoid the need for a deposit and that it is also not clear whether the deposit of biological material subject of this application, as described at page 6 of the disclosure, meets all of the criteria set forth in 37 CFR 1.801 -1.809.

Applicants hereby aver that the deep-sea fungus described in the patent as *Aspergillus sp.* has been deposited in the Microbial Type Culture Collection (MTCC) of Institute of Microbial Technology, Chandigarh, India under the international deposition no. MTCC 5102. The culture has been deposited under Budapest Treaty for the purpose of patent procedures. International Depository Authority recognizes this culture collection.

Withdrawal of the rejection under §112, first paragraph is respectfully requested.

III. Claim Rejections Under 35 U.S.C. 112, second paragraph

Claims 16-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Claim 16

The Examiner contends that the recitation of "low temperature" in claim 16 is confusing because the degree of "low" is allegedly unclear and ambiguous. The Examiner also finds that it is unclear whether the property pertains to the enzyme or to the producing microorganism.

The term "low temperature" has been deleted.

On page 4, the Examiner states that there is no clear indication as to the composition of the experimental medium and that there is no internal antecedent basis for "the experimental medium".

Claim 16 has been amended to provide antecedent basis for "experimental medium" and to recite components of the medium.

On pages 4-5, the Examiner states that the sole designation of a microorganism by its internal designation be it a name or number is arbitrary and creates ambiguity in the claims.

Claim 16 has been amended to refer to the genus/species and deposit accession number of the claimed fungal strain.

The Examiner finds that the recitation of "shallow static culture" is ambiguous and open to interpretation and specifies for example, that "it is unclear, for example, whether the culturing requires a liquid or a solid substrate."

Applicants respectfully submit that the term shallow static culture would be understood by one skilled in the art and that specification of particular variables or parameters for preparing a shallow static culture is unnecessary in the context of the present disclosure.

B. Claim 17, 18 and 19

The Examiner notes that claim 17 lacks antecedent basis for "the fungus *Aspergillus* sp. bearing international deposition number".

Claims 18-19 are also stated to lack antecedent basis for "the fungus" or "said fungus" it is noted that claim 16 recites fungal strain and are found to be vague and indefinite due to the recitation of "can be grown".

Claim 17 has been amended to provide proper antecedent basis and claims 18 and 19 have been amended to recite the term "fungal strain" and to recite "is grown" rather than "can be grown."

C. Claim 20

On page 5, the Examiner indicates that claim 20 lacks clear antecedent basis for "the culture media" and that it is unclear which culture medium is intended-- (a) or (c) (d) or all.

Claim 20 has been amended to refer to the medium of step (a).

D. Claim 21

Also on page 5, claim 21 is alleged to be vague and indefinite. According to the Examiner, "Czapek Dox broth" does not appear to be an art recognized culture broth with a specific composition.

Applicants submit that Czapek Dox broth is a commercially available product and would be recognized as such by those skilled in the art. Nonetheless, for purposes of advancing prosecution Applicants have amended claim the claims to recite the components of Czapek Dox broth.

The Examiner also finds it unclear what constitutes “spray-dried whitener.” Applicants submit that spray-dried whitener is also a commercially available product and would be recognized as such by those skilled in the art. The recitation of components is not necessary for purposes of particularly pointing out and distinctly claiming the invention.

The phrase “independently at 1%” is also stated to be unclear and without antecedent basis. Claim 21 has been amended to clarify the meaning of “independently at 1%”

Withdrawal of the rejection under §112, second paragraph is respectfully requested.

IV. Claim Rejections under 35 U.S.C. §103(a)

Claims 16-18 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Nehra et al. in view of Sindhu et al., Malathi et al. and Atlas et al.

Applicants submit that Nehra et al. in view of Sindhu et al., Malathi et al. and Atlas et al. fail to render obvious the claims as presently amended at least by virtue of the fact that these references, alone or in combination, fail to teach or suggest use of spray-dried dairy whitener as a novel source of protease induction and our culture.

Further, each of these references teach use of *Aspergillus flavus*. The properties of the *Aspergillus* species taught by Applicants and the protease produced thereby are unique. Most *Aspergillus* strains produce proteases but these proteases do not necessarily exhibit unique properties of the *Aspergillus* species presently disclosed (e.g., the fungus grows and produces protease in a seawater medium) or of the protease (please see Table 4 of the disclosure). None of the cited references use of a fungal strain having the characteristics presently claimed.

Withdrawal of the rejection under §103 is respectfully requested.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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